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**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Import Administration

**FROM:** Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review: Certain Frozen Warmwater Shrimp  
from the Socialist Republic of Vietnam

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## SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") is conducting the administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam") for the period of review ("POR") February 1, 2011, through January 31, 2012. The Department has preliminarily determined that sales of the subject merchandise in the United States by the Minh Phu Group,<sup>1</sup> and Nha Trang Seafoods,<sup>2</sup> the two mandatory respondents, and Quoc Viet,<sup>3</sup> the voluntary respondent, were not at prices below normal value ("NV").

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the "Act").

## Background

On March 30, 2012, the Department initiated an administrative review of 276 exporters of certain frozen warmwater shrimp from Vietnam for the period February 1, 2011, through January

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<sup>1</sup> Minh Phu Seafood Corporation, Minh Qui Seafood Co., Ltd., Minh Phat Seafood Co., Ltd. (collectively, the "Minh Phu Group").

<sup>2</sup> Nha Trang Seaproduct Company and its affiliates, NT Seafoods Corporation, Nhatrang Seafoods-F.89 Joint Stock Company, and NTSF Seafoods Joint Stock Company (collectively, the "Nha Trang Seafoods").

<sup>3</sup> Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd. ("Quoc Viet").

31, 2012.<sup>4</sup> However, after accounting for duplicate names and additional trade names associated with certain exporters, the number of companies upon which we initiated is actually 82 companies/groups. On August 24, 2012, American Shrimp Processors Association (“Petitioner”) submitted targeted dumping allegations against the Minh Phu Group and Nha Trang Seafoods, alleging the Minh Phu Group and Nha Trang Seafoods engaged in targeted dumping during the POR.<sup>5</sup>

On September 7, 2012, the Department notified the public that it was extending the time period for issuing the preliminary results by 120 days.<sup>6</sup> On October 31, 2012, the Department tolled all administrative deadlines by two days.<sup>7</sup>

On February 8, 2013, the Department received comments from Petitioner regarding certain issues regarding the Minh Phu Group. However, because of the close proximity to the preliminary results, we are unable to take Petitioner’s comments into consideration for the preliminary results. Petitioner’s comments will be considered for purposes of the final results of this review.

### Respondent Selection

Section 777A(c)(1) of the Act, directs the Department to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted average dumping margin determinations because of the large number of exporters and producers involved in the review.

On April 12, 2012, the Department placed CBP data for the Harmonized Tariff Schedule (“HTS”) numbers listed in the scope of the order on the record of the review and requested comments on the data for use in respondent selection.<sup>8</sup> Between April 23 and April 30, 2012, we

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<sup>4</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, and Deferral of Administrative Review, 77 FR 19179 (March 30, 2012) (“Initiation”).

<sup>5</sup> See Letter from Petitioner, re: “ASPA’s Targeted Dumping Comments, re Minh Phu,” dated August 24, 2012, at 3 and Attachment 1-2 and “ASPA’s Targeted Dumping Comments, re Minh Phu,” dated August 24, 2012, at 3 and Attachment 1-2.

<sup>6</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office 9 Antidumping and Countervailing Duty Operations, from Alexis Polovina, International Trade Compliance Analyst, Office 9, re: “Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated September 7, 2012.

<sup>7</sup> As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of this administrative review is now March 4, 2013. See Memorandum to the Record, from Paul Piquado, Assistant Secretary for Import Administration, “Tolling Administrative Deadlines as a Result of the Government Closure During Hurricane Sandy,” dated October 31, 2012.

<sup>8</sup> See Letter to All Interested Parties, Re: “Administrative, Review of the Antidumping Duty Order of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: CBP Data for Respondent Selection,” dated April 12, 2012.

received comments from Petitioner, the Domestic Producers,<sup>9</sup> and certain Vietnamese respondents regarding respondent selection for this review. On May 3, 2012, the Minh Phu Group and Nha Trang Seafoods submitted rebuttal comments.

On May 25, 2012, the Department issued the respondent selection memorandum, in which it explained that, because of the large numbers of exporters or producers involved in the review, it would not be practicable to individually examine all companies. Rather, the Department determined that it could only reasonably examine two exporters in this review. Pursuant to section 777A(c)(2)(B) of the Act, the Department selected the Minh Phu Group and Nha Trang Seafoods for individual examination.<sup>10</sup> Additionally, in response to Quoc Viet's request to be treated as a voluntary respondent, the Department explained that if any company, including Quoc Viet, wishes to be considered as a voluntary respondent and meets the requirements of section 782(a) of the Act and 19 CFR 351.204(d), the Department will consider whether to examine a voluntary respondent at that time.<sup>11</sup>

On May 25, 2012, the Department sent the nonmarket economy ("NME") antidumping questionnaire to the Minh Phu Group and Nha Trang Seafoods. On June 15, 2012, the Department received a timely filed voluntary response to Section A of the questionnaire from Quoc Viet. The Department selected Quoc Viet as a voluntary respondent because selecting Quoc Viet as a voluntary respondent would not be unduly burdensome or inhibit the timely completion of the review.<sup>12</sup> Additionally, the Department received responses from the Minh Phu Group and Nha Trang Seafoods on June 15, 2012. The Department issued supplemental questionnaires and received responses between July, 2012 and January 2013.

### Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>13</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

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<sup>9</sup> The Domestic Producers are the Ad Hoc Shrimp Trade Action Committee members: Nancy Edens; Papa Rod, Inc.; Carolina Seafoods; Bosarge Boats, Inc.; Knight's Seafood Inc.; Big Grapes, Inc.; Versaggi Shrimp Co.; and Craig Wallis.

<sup>10</sup> See Memorandum to James Doyle, Director, Office 9, AD/CVD Operations, from Alexis Polovina, Senior Analyst, Office 9, "7<sup>th</sup> Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Respondents for Individual Review," dated May 25, 2012 ("Respondent Selection Memo").

<sup>11</sup> See Respondent Selection Memo, at 7.

<sup>12</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office 9, "Antidumping Duty Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of a Voluntary Respondent," dated September 28, 2012.

<sup>13</sup> "Tails" in this context means the tail fan, which includes the telson and the uropods.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); and 7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by these orders are currently classified under the following HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.<sup>14</sup>

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<sup>14</sup> On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (“CIT”) decision in *Ad Hoc Shrimp Trade Action Committee v. United States*, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (“ITC”) determination, which found the domestic like product to include dusted shrimp. See *Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision*, 76 FR 23277 (April 26, 2011); see also *Ad Hoc Shrimp Trade Action Committee v. United States*, 703 F. Supp. 2d 1330 (CIT 2010) and *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

## DISCUSSION OF THE METHODOLOGY

### Request for Revocation, In Part

On February 29, 2012, Nha Trang Seafoods, requested revocation of the order under 19 CFR 351.222(b)(2). In its request for revocation, Nha Trang Seafoods argued that it is likely to maintain three consecutive years of sales at not less than NV. In accordance with 19 CFR 351.222(e)(1), Nha Trang Seafoods provided a certification stating that 1), they have sold the subject merchandise in the United States at not less than fair value during the current POR, 2) it sold the subject merchandise in commercial quantities, and 3) they agree to immediate reinstatement if the Department should conclude that they have sold the subject merchandise at less than NV subsequent to revocation.

We preliminarily determine not to revoke the order with respect to Nha Trang Seafoods. 19 CFR 351.222(b)(B)(ii)(2)(i)<sup>15</sup> states that in determining whether to revoke an antidumping duty order in part, the Secretary will consider whether exporters or producers covered by the order have sold the merchandise at not less than NV for a period of at least three consecutive years.<sup>16</sup> In AR6 VN Shrimp Final,<sup>17</sup> the Department determined that Nha Trang Seafoods sold the subject merchandise at less than NV and assigned Nha Trang Seafoods a weight-averaged dumping margin of 1.23 percent.<sup>18</sup> Therefore, as Nha Trang Seafoods had sales at less than NV in the sixth administrative review, we have determined not to revoke the order with respect to Nha Trang Seafoods because it has not met the regulatory criteria for revocation set forth in 19 CFR 351.222(b).<sup>19</sup>

### Preliminary Determination of No Shipments

Between April 20, and May, 29, 2012, the following companies filed no shipment certifications indicating that they did not export subject merchandise to the United States during the POR: Amanda Food (Vietnam) Ltd., Anvifish Joint Stock Company, Bien Dong Seafood Co., Ltd., Binh An Seafood Joint Stock Company, Camranh Seafoods Processing Enterprise Pte. (“Camranh Seafoods”), Thong Thuan Seafood Company, Vietnam Clean Seafood Corporation, and Vinh Hoan Corporation. In order to examine these claims, we sent an inquiry to CBP requesting that any CBP office that had any information contrary to the no shipments claims, to

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<sup>15</sup> The Department recently modified the section of its regulations concerning the revocation of antidumping and countervailing duty orders in whole or in part, but that modification does not apply to this administrative review. See Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 77 FR 29875 (May 21, 2012). Reference to 19 CFR 351.222(b) thus refers to the Department’s regulations in effect prior to the modification.

<sup>16</sup> See 19 CFR 351.222(b)(B)(ii)(2)(i)(A).

<sup>17</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 77 FR 55800, 55802 (September 11, 2012) (“AR6 VN Shrimp”), unchanged in Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Amended Final Results and Partial Final Rescission of Antidumping Duty Administrative Review, 77 FR 64102 (October 18, 2012) (“AR6 VN Shrimp Final”); see also Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Amended Final Results and Partial Rescission of Antidumping Duty Administrative Review, 77 FR 64102, 64103 (October 18, 2012) (“AR6 VN Shrimp Amended Final Results”).

<sup>18</sup> See AR6 VN Shrimp, 77 FR at 55802 and AR6 VN Shrimp Amended Final Results, 77 FR at 64102, 64103.

<sup>19</sup> Nha Trang submitted its request for revocation before the publication of AR6 VN Shrimp Final.

alert the Department. We have received no such response from CBP with respect to Amanda Food (Vietnam) Ltd., Anvifish Joint Stock Company, Bien Dong Seafood Co., Ltd., Binh An Seafood Joint Stock Company, Thong Thuan Seafood Company, Vietnam Clean Seafood Corporation, and Vinh Hoan Corporation.

On January 3, 2013, the Department received CBP documentation which is at variance with the no shipment statement made on behalf of Camranh Seafoods. On January 4, 2013, the Department requested comments regarding the CBP entry documentation.<sup>20</sup> On January 18, 2013, Camranh Seafoods submitted comments regarding the CBP entry documentation.<sup>21</sup> The information in the CBP entry documents indicates that this was an entry of one kilogram (“kg”) of “Non Commercial Value” and Camranh Seafoods states that it received no compensation for this entry.<sup>22</sup> Therefore, because the evidence on the record indicates that Camranh Seafoods’ entry was not a sale in the United States, we preliminarily determine that Camranh Seafoods had no sales in the United States during the POR.

Based on the certifications submitted by the above companies and our analysis of the CBP information, we preliminarily determine that Amanda Food (Vietnam) Ltd., Anvifish Joint Stock Company, Bien Dong Seafood Co., Ltd., Binh An Seafood Joint Stock Company, Camranh Seafoods, Thong Thuan Seafood Company, Vietnam Clean Seafood Corporation, and Vinh Hoan Corporation did not have any reviewable transactions during the POR. In addition, the Department finds that consistent with its recently announced refinement to its assessment practice in NME cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to the above named companies.<sup>23</sup>

#### Non-Market Economy Country

The Department considers Vietnam to be an NME country.<sup>24</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat Vietnam as an NME country for purposes of these preliminary results.

#### Separate Rates

Pursuant to section 771(18)(C) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a

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<sup>20</sup> See Memorandum to the File, from Bob Palmer, Analyst, Office 9, re: “Customs and Border Protection (“CBP”) Entry Documents,” dated January 4, 2013.

<sup>21</sup> See Letter from Camranh Seafoods, re: “Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of No Shipments,” dated January 18, 2013.

<sup>22</sup> Id.; see also, Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012), and accompanying Issue and Decisions Memorandum at Comment 31.

<sup>23</sup> See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694-65695 (October 24, 2011).

<sup>24</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Administrative Review, 77 FR 13547, 13550 (March 7, 2012), unchanged in AR6 VN Shrimp Final.

single antidumping duty rate.<sup>25</sup> In the Initiation, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.<sup>26</sup> It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Sparklers,<sup>27</sup> as amplified by Silicon Carbide.<sup>28</sup> However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>29</sup>

In addition to the two mandatory respondents, the Minh Phu Group and Nha Trang Seafoods, and the voluntary respondent, Quoc Viet, the Department received separate rate applications or certifications from the following 30 companies ("Separate-Rate Applicants"):

1. Bac Lieu Fisheries Joint Stock Company
2. BIM Seafood Joint Stock Company
3. Cadovimex Seafood Import-Export and Processing Joint Stock Company
4. Cafatex Fishery Joint Stock Corporation
5. Can Tho Import Export Fishery Limited Company
6. Camau Frozen Seafood Processing Import Export Corporation
7. Coastal Fisheries Development Corporation
8. C.P. Vietnam Corporation
9. Cuu Long Seaproducts Company
10. Danang Seaproducts Import Export Corporation
11. Gallant Ocean (Vietnam) Co., Ltd.
12. Investment Commerce Fisheries Corporation
13. Kim Anh Co., Ltd.
14. Minh Hai Export Frozen Seafood Processing Joint-Stock Company
15. Minh Hai Joint-Stock Seafoods Processing Company
16. Minh Hai Sea Products Import Export Company
17. Nhat Duc Co., Ltd.
18. Nha Trang Fisheries Joint Stock Company
19. Ngoc Sinh Private Enterprise

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<sup>25</sup> See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53082 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China, 71 FR 29303, 29307 (May 22, 2006).

<sup>26</sup> See Initiation, 77 FR at 19719-81.

<sup>27</sup> See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers").

<sup>28</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

<sup>29</sup> See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007) ("Wax Candles from the PRC").

20. Ngoc Tri Seafood Joint Stock Company
21. Phu Cuong Jostoco Seafood Corporation
22. Phuong Nam Foodstuff Corp.
23. Sao Ta Foods Joint Stock Company
24. Soc Trang Seafood Joint Stock Company
25. Seavina Joint Stock Company
26. Thuan Phuoc Seafoods and Trading Corporation
27. UTXI Aquatic Products Processing Company
28. Viet Foods Co., Ltd.
29. Viet I-Mei Frozen Foods Co., Ltd.
30. Viet Hai Seafood Co., Ltd.

The status of the Separate-Rate Applicants is discussed below.

41 companies did not submit either a separate-rate application or certification.<sup>30</sup> Therefore, because these companies did not demonstrate their eligibility for separate rate status, they remain preliminarily included as part of the Vietnam-wide entity.

Additionally, we note that some of the Separate-Rate Applicants requested separate rate status for various names which were not included on their business license. Further, we note the Initiation included variation of company names not included in either the separate-rate applications or certifications of the Separate-Rate Applicants.<sup>31</sup> Because these names (1) have not been granted separate-rate status in a previous granting period, and (2) do not appear on the business license submitted to the Department, and, therefore, are not recognized as representing the same entity, we are preliminarily not including these names on the lists of those which separate rate status applies.<sup>32</sup>

Further, the Department notes that in the current and previous reviews, many names appearing the Initiation and previous reviews have become duplicative or vary in minor ways.<sup>33</sup> On November 23, 2012, the Department requested that interested parties provide clarification of exactly which names they wish to be granted a separate rate.<sup>34</sup> On December 7, 2012, Petitioner, the mandatory respondents, and certain Separate Rate Respondents provided comments. After consideration of the comments provided, the Department has removed duplicative and minor variations of the company names from the company names listed in the publish Federal Register notice accompanying this decision memo.

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<sup>30</sup> See Appendix.

<sup>31</sup> See Id.

<sup>32</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) (“3<sup>rd</sup> AR Final”), and accompanying Issues and Decision Memorandum at Comment 17.

<sup>33</sup> See Initiation, 77 FR 19185-19189; see also AR6 VN Shrimp Final.

<sup>34</sup> See Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Alan Ray, Senior Analyst, Office 9, re: “Seventh Administrative Review of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated November 23, 2012.



a. Wholly Foreign Owned

C.P. Vietnam Corporation has reported that it is 100 percent owned by foreign entities.<sup>35</sup> Gallant Ocean (Vietnam) Co., Ltd. has reported that it is 100 percent owned by foreign entities.<sup>36</sup> Viet I-Mei Frozen Foods Co., Ltd. has reported that it is 100 percent owned by foreign entities.<sup>37</sup> Therefore, there is no Vietnamese ownership of these three companies, and because the Department has no evidence indicating that these companies are under the control of the Vietnamese government, further separate rate analysis is not necessary to determine whether they are independent from government control.<sup>38</sup> Consequently, we preliminarily determine that C.P. Vietnam Corporation, Gallant Ocean (Vietnam) Co., Ltd., and Viet I-Mei Frozen Foods Co., Ltd. have met the criteria for a separate rate.

b. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.<sup>39</sup> The evidence provided by the Minh Phu Group, Nha Trang Seafoods, Quoc Viet and the Separate-Rate Applicants supports a preliminary finding of de jure absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.<sup>40</sup>

c. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices ("EPs") are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent

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<sup>35</sup> See Letter from C.P. Vietnam Corporation, re: "C.P. Vietnam Corporation's Separate Rate Certification," dated May 29, 2012 at 4 and Exhibit 2.

<sup>36</sup> See Letter from Gallant Ocean (Vietnam) Co., Ltd., re: "Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Separate Rate Application," dated May 29, 2012 at 11-12 and Exhibit 5-6.

<sup>37</sup> See Letter from Viet I-Mei Frozen Foods Co., Ltd., re: "Viet I-Mei's Response to Separate Rate Certification," dated May 29, 2012 at 5 and Exhibit 2.

<sup>38</sup> See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review, 66 FR 1303, 1306 (January 8, 2001), unchanged in Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001); Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104 (December 20, 1999).

<sup>39</sup> See Sparklers, 56 FR at 20589.

<sup>40</sup> See, e.g., the Minh Phu Group's Section A Questionnaire Response, dated June 15, 2012, at 4-34, Nha Trang Seafoods Group's AQR, dated June 15, 2012 at 4-28 and Exhibit A-1.

decisions regarding disposition of profits or financing of losses.<sup>41</sup> The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.<sup>42</sup> The evidence provided by the Minh Phu Group, Nha Trang Seafoods, Quoc Viet, and the Separate-Rate Applicants supports a preliminary finding of de facto absence of government control based on the following: (1) the companies set their own EPs independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.<sup>43</sup> Therefore, the Department preliminarily finds that the Minh Phu Group, Nha Trang Seafoods, Quoc Viet and the Separate-Rate Applicants have established that they qualify for a separate rate under the criteria established by Silicon Carbide and Sparklers.

### Separate Rate Calculation

In the "Respondent Selection" section above, we stated that the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made, and selected two exporters as mandatory respondents in this review and one voluntary respondent. The Minh Phu Group and Nha Trang Seafoods participated in the review as mandatory respondents. Thirty additional companies (listed in the "Separate Rates" section above) submitted timely information as requested by the Department and remained subject to review as separate rate respondents.

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department has limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not selected for individual examination. Section 735(c)(5)(A) of the Act instructs that we do not calculate an all-others rate using any zero or de minimis weighted-average dumping margins or any weighted-average dumping margins based entirely on facts available. Accordingly, the Department's usual practice has been to average the rates for the selected companies excluding rates that are zero, de minimis, or based entirely on facts available.<sup>44</sup> Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, de minimis, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents. One method that section 735(c)(5)(B) of the Act contemplates as a possible method is "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

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<sup>41</sup> See Silicon Carbide, 59 FR at 22586-87; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

<sup>42</sup> Id.

<sup>43</sup> See, e.g., Nha Trang Seafoods Group's Section A Questionnaire Response, dated June 15, 2012, at 4-28 and Exhibit A-1 and Quoc Viet's Section A Questionnaire Response, dated June 15, 2012, at 2-19.

<sup>44</sup> See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

In this review, we have calculated weighted-average dumping margins of zero or de minimis for both companies selected as mandatory respondents.<sup>45</sup> In previous cases, the Department has determined that a “reasonable method” to use when, as here, the rates of the respondents selected for individual examination are zero or de minimis is to apply to those companies not selected for individual examination the average of the most recently determined rates that are not zero, de minimis, or based entirely on facts available (which may be from a prior review or new shipper review).<sup>46</sup> If any such non-selected company had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, however, the Department has applied such individual rate to the non-selected company in the review in question, including when that rate is zero or de minimis.<sup>47</sup> However, all prior rates for this proceeding were calculated using the Department’s zeroing methodology. The Department has stated that it will not use its zeroing methodology in administrative reviews with preliminary determinations issued after April 16, 2012.<sup>48</sup> Therefore, we will not apply any rates calculated in prior reviews to the non-selected companies in these reviews. Based on this, and in accordance with the statute and the Department’s recent practice in AFBs 2012,<sup>49</sup> we determine that a reasonable method for determining the weighted-average dumping margins for the non-selected respondents in this review is to average the weighted-average dumping margins calculated for the mandatory respondents. Consequently, the rate established for the Separate-Rate Applicants is an ad valorem rate of 0.00 percent.

#### Vietnam-Wide Entity

Upon initiation of the administrative review, we provided the opportunity for all companies upon which the review was initiated to complete either the separate-rates application or certification.<sup>50</sup> We have preliminarily determined that 41 companies did not demonstrate their eligibility for a separate rate and are properly considered part of the Vietnam-wide entity. In NME proceedings,

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<sup>45</sup> We have not included the weighted-average margin calculated for Quoc Viet, the voluntary respondent, in the calculation of the separate rate in accordance with the Department’s practice, see Certain Activated Carbon From the People’s Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results, 74 FR 21317, 21324 (May 7, 2009) unchanged in First Administrative Review of Certain Activated Carbon From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009).

<sup>46</sup> See Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318, 64322 (October 18, 2011); see also Certain Cased Pencils From the People’s Republic of China: Final Results of the Antidumping Duty Administrative Review, 75 FR 38980 (July 7, 2010), and accompanying Issues and Decision Memo at Comment 4.

<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) (“Final Modification for Reviews”).

<sup>50</sup> See Ball Bearings and Parts Thereof From France, Germany, and Italy: Preliminary Results of Antidumping Duty Administrative Reviews and Rescission of Antidumping Duty Administrative Reviews in Part, 77 FR 33159 (June 5, 2012) (“AFBs 2012”).

<sup>50</sup> The separate-rate certification and separate-rate applications were available at: <http://ia.ita.doc.gov/nme/nme-sep-rate.html>.

“‘rates’ may consist of a single dumping margin applicable to all exporters and producers.”<sup>51</sup> As explained above in the “Separate Rates” section, all companies within Vietnam are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are thus assigned a single antidumping duty rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that have provided sufficient evidence to establish that they operate freely with respect to their export activities.<sup>52</sup> In this regard, we note that no party has submitted evidence to demonstrate that such government influence is no longer present or that our treatment of the NME entity is otherwise incorrect. Therefore, we are assigning the entity a rate of 25.76 percent, the only rate ever determined for the Vietnam-wide entity in this proceeding.

#### Surrogate Country and Surrogate Value Data

On August 31, 2012, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value (“SV”) data.<sup>53</sup> On October 1, 2012, the Minh Phu Group and Nha Trang Seafoods submitted surrogate country comments.<sup>54</sup> On October 16, 2012, Petitioner and Domestic Producers submitted surrogate country comments.<sup>55</sup> On October 30, 2012, Domestic Producers submitted SV comments.<sup>56</sup> On November 2, 2012, Petitioners and the Minh Phu Group and Nha Trang Seafoods submitted SV comments.<sup>57</sup> On November 13, 2012, Petitioner submitted rebuttal SV comments.<sup>58</sup>

#### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer’s factors of production

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<sup>51</sup> See 19 CFR 351.107(d).

<sup>52</sup> See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003).

<sup>53</sup> See Department’s Letter to All Interested Parties, Re: “Seventh Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Country List,” dated August 31, 2012 (“Surrogate Country Memo”).

<sup>54</sup> See Letter from the Minh Phu Group and Nha Trang, re: “Minh Phu Group and Nha Trang Seafoods Group Comments on Surrogate Country,” dated October 1, 2012.

<sup>55</sup> See Letter from Petitioners, re: “ASPA’s Comments re Surrogate Country Selection,” dated October 16, 2012; see also Letter from Domestic Producers, re: “Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Comments on Surrogate Country Selection for the Seventh Administrative Review (2011-2012),” dated October 16, 2012.

<sup>56</sup> See Letter from Domestic Producers, re: “Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Comments on Surrogate Value Information for the Seventh Administrative Review (2011-2012),” dated October 16, 2012.

<sup>57</sup> See Letter from Petitioner, re: “Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (Administrative Review, POR 7): ASPA’s Comments re Surrogate Values,” dated November 2, 2012 (“Petitioner SV Comments”) and Letter from the Minh Phu Group and Nha Trang Seafoods, re: “Minh Phu Group and Nha Trang Seafoods Group Comments on Surrogate Values,” dated November 2, 2012 (“Respondent SV Comments”).

<sup>58</sup> See Letter from Petitioner, re: “Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (Administrative Review, POR 7): ASPA’s Rebuttal Comments re Surrogate Values,” dated November 13, 2012.

(“FOP”), valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.<sup>59</sup> The Department determined that Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are countries whose per capita gross national incomes (“GNI”) are comparable to the PRC in terms of economic development.<sup>60</sup> The sources of the SVs we have used in this investigation are discussed under the “Normal Value” section below.

Petitioner submits that for purposes of the Department’s selection of an appropriate surrogate, India is a significant producer of comparable merchandise with contemporaneous and publicly available data with which to obtain SVs. Petitioner states that India provides a contemporaneous count-size specific price for shrimp as well as other contemporaneous data for the primary inputs used to produce subject merchandise. Therefore, Petitioner proposes India as the appropriate primary surrogate country for this review.

Domestic Producers do not provide a choice for surrogate country. Rather, citing Amanda Foods,<sup>61</sup> Domestic Producers contend that the Department must provide a rationale, based on record evidence, that the selection of surrogate country is economically comparable to Vietnam.

The Minh Phu Group and Nha Trang Seafoods do not contest the economic comparability of the countries on the surrogate country list. However, the Minh Phu Group and Nha Trang Seafoods argue the Department should select Bangladesh as the primary surrogate country to value FOPs, because Bangladesh is economically comparable to Vietnam, a significant producer of comparable merchandise, and has count-size specific values for black tiger shrimp which is farmed in both Indonesia and Vietnam.

### Economic Comparability

As explained in our Surrogate Country Memo, the Department considers Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines all comparable to Vietnam in terms of economic development.<sup>62</sup> Accordingly, unless we find that all of these countries are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, or we find that another equally comparable country is an appropriate surrogate, we will rely on data from one of these

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<sup>59</sup> See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin”).

<sup>60</sup> See Surrogate Country Memo.

<sup>61</sup> See Amanda Foods (Vietnam) Ltd. v. United States, 647 F. Supp. 2d 1368, 1378-81 (CIT 2009).

<sup>62</sup> See Surrogate Country Memo.

countries.<sup>63</sup> Therefore, we consider all six countries identified in the Surrogate Country Memo as having met this prong of the surrogate country selection criteria.

### Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the Policy Bulletin for guidance on defining comparable merchandise. The Policy Bulletin states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."<sup>64</sup> Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.<sup>65</sup> Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.<sup>66</sup> "In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise."<sup>67</sup> In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.<sup>68</sup>

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.<sup>69</sup> Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter,"<sup>70</sup> it

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<sup>63</sup> See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 76 FR 67703, 67708 (November 2, 2011) ("Steel Wheel from the PRC Preliminary Determination"), unchanged in Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances, 77 FR 17021, March 23, 2012 ("Steel Wheels from the PRC Final Determination").

<sup>64</sup> See Policy Bulletin, at 2.

<sup>65</sup> The Policy Bulletin also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." See *id.*, at note 6.

<sup>66</sup> See Sebacin Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 65674, 65675-76 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").

<sup>67</sup> See Policy Bulletin, at 2.

<sup>68</sup> See *id.*, at 3.

<sup>69</sup> See section 773(c) of the Act; see also Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

<sup>70</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

does not preclude reliance on additional or alternative metrics. In this case, we obtained shrimp production information from the Food and Agriculture Organization of the United Nations Fisheries Statistics (“UN FAO Statistics”).<sup>71</sup> After an examination of this information, Bangladesh, India, Indonesia, and the Philippines report “significant production” of shrimp. Because only Nicaragua and Pakistan have been disqualified through the above analysis, the Department looks to the availability of SV data to determine the most appropriate surrogate country from India, Indonesia, and the Philippines..

### Data Availability

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input.<sup>72</sup> There is no hierarchy among these criteria. It is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.<sup>73</sup> In this case, because there are no data or surrogate financial statements for the Philippines on the record, this country will not be considered for primary surrogate country selection purposes at this time.

The record contains publically available SV information for most FOPs from Bangladesh, India and Indonesia. With respect the main raw material input, shrimp, Petitioner provided an article from AQUA Culture Asia Pacific Magazine (“AQUA Culture”), which reports a price from India for a single shrimp count-size of unknown species for only two months of the POR.<sup>74</sup> The Vietnamese respondents provided shrimp SV data for Bangladesh and Indonesia from a study conducted by the Network of Aquaculture Centres in Asia-Pacific (“NACA”), an intergovernmental organization affiliated with the United Nation’s (“UN”) Food and Agricultural Organization (“FAO”). However, the Department could not obtain a useable financial statement from Indonesia.

As stated above, the Department’s practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties.<sup>75</sup> As a general matter, the Department prefers to use publicly available data representing a broad-market average to value SVs.<sup>76</sup> The Department notes that the value of the main input, head-on, shell-on shrimp, is a critical FOP in the dumping calculation as it accounts for a significant percentage

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<sup>71</sup> See Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Alan Ray, International Trade Analyst, Office 9, re: “Seventh Antidumping Duty Administrative Review of Certain Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results,” dated concurrently with this memorandum (“Prelim SV Memo”).

<sup>72</sup> See, e.g., First Administrative Review of Certain Polyester Staple Fiber From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 1336 (January 11, 2010), and accompanying Issues and Decision Memorandum, at Comment 1.

<sup>73</sup> See Policy Bulletin.

<sup>74</sup> See Petitioner SV Comments, at Attachment 1.

<sup>75</sup> See Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007), and accompanying Issues and Decision Memorandum at Comment 2A.

<sup>76</sup> Id.

of NV. Moreover, the ability to value shrimp on a count-size basis is a significant consideration with respect to the data available on the record, as the subject merchandise and the raw shrimp input are both sold on a count-size specific basis. For these reasons, in prior administrative reviews, the Department rejected shrimp SVs with limited count sizes.<sup>77</sup>

Both the Bangladeshi and Indonesian shrimp values within the NACA study are compiled by the UN's FAO from actual pricing records kept by Bangladeshi and Indonesian farmers, traders, depots, agents, and processors.<sup>78</sup> Unlike the Bangladeshi and Indonesian data within the NACA study, the Indian shrimp data on the record is limited and does not satisfy as many factors of the Department's data selection criteria. Specifically, we note that the AQUA Culture data contains a single count-size specific data, omitting substantial portions of the range of sizes of shrimp sold by the respondents. Additionally, the AQUA Culture data does not provide any information on how the price was derived. Therefore, with respect to the data considerations, we find that the record contains shrimp values for Bangladesh and Indonesia that better meet our selection criteria than the Indian source.

While both the Bangladeshi and Indonesian shrimp values within the NACA study are publicly available, represent a broad-market average, count-size-specific, and represent actual transaction prices, the Bangladeshi NACA information pertains only to giant tiger shrimp (*Penaeus monodon*), while the Indonesian data pertains to both *Penaeus monodon* and white shrimp (*Penaeus vannamei*), which are both sold by the respondents.<sup>79</sup> Moreover, we note that nearly all the Bangladeshi SVs on the record are not contemporaneous with the POR,<sup>80</sup> while the Indonesian SV's obtained by the Department are contemporaneous for nearly all the reported FOPs.<sup>81</sup> While the Department could not obtain a useable financial statement from Indonesia, we have selected Indonesia as the primary surrogate country because shrimp is the main factor of production in this case, the Indonesian shrimp SV are more specific to the shrimp consumed by respondents and most other SV data are contemporaneous with the POR. With regard to financial statements, the Department determined to use a financial statement from Bangladesh to calculate the surrogate financial ratios in these preliminary results.

The Department finds Indonesia to be a reliable source for SVs because Indonesia is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. Given the above facts, the Department has selected Indonesia as the primary surrogate country for this review. A detailed explanation of the SVs is provided below in the "Normal Value" section of this notice.

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<sup>77</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009), and accompanying Issues and Decision Memorandum at Comment 6.

<sup>78</sup> See Prelim SV Memo, at 3; see also Respondents' SV Comments, at Exhibit SV-4.

<sup>79</sup> See Respondents' SV Comments, at Exhibit SV-4.

<sup>80</sup> See Respondents' SV Comments, at Exhibit SV-1.

<sup>81</sup> See Prelim SV Memo.



## Date of Sale

The Minh Phu Group, Nha Trang Seafoods, and Quoc Viet reported the invoice date as the date of sale because they claim that, for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established based on the invoice date. In this case, as the Department found no evidence contrary to their claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for these preliminary results in accordance with 19 CFR 351.401(i).<sup>82</sup>

## Fair Value Comparisons

To determine whether sales of certain warmwater shrimp to the United States were made at less than NV, the Department compared either the EP or constructed export price (“CEP”) to NV, as described in the “U.S. Price,” and “Normal Value” sections below. In these preliminary results, the Department applied the average-to-average comparison methodology in the Final Modification for Reviews.<sup>83</sup> In particular, the Department compared weighted-average U.S. prices with monthly, weighted-average NVs, and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

## Targeted Dumping

In antidumping investigations, the Department examines whether to use the average-to-transaction method by using a targeted dumping analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of an administrative review, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in antidumping investigations. Accordingly, the Department finds the analysis that has been used in antidumping investigations may be instructive for purposes of examining whether to apply the average-to-transaction method in this administrative review. As stated above, Petitioner made certain targeted dumping allegations with respect to the Minh Phu Group and Nha Trang Seafoods.<sup>84</sup>

In recent antidumping investigations and administrative reviews where the Department has addressed targeted dumping allegations, the Department has employed the Nails test<sup>85</sup> for each

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<sup>82</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

<sup>83</sup> See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) (“Final Modification for Reviews”).

<sup>84</sup> Petitioner’s specific allegations are business proprietary information. See Letter from Petitioner, re: “ASPA’s Targeted Dumping Comments, re Minh Phu,” dated August 24, 2012, at 3 and Attachment 1-2 and “ASPA’s Targeted Dumping Comments, re Minh Phu,” dated August 24, 2012, at 3 and Attachment 1-2.

<sup>85</sup> See Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) and Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008) (collectively, Nails), as modified in more recent investigations, e.g., Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318

respondent subject to an allegation.<sup>86</sup> The Department in the preliminary results of this administrative review for the Minh Phu Group and Nha Trang Seafoods has applied the Nails test, a two-step process as described below, in order to consider whether to use the average-to-transaction method so that parties may comment on this approach.

In the first stage of the test, the “standard deviation test,” the Department determined the volume of the allegedly targeted group’s (i.e., purchaser, region or time period) sales of subject merchandise that are at prices more than one standard deviation below the weighted-average price of all sales under review, targeted and non-targeted. The Department calculated the standard deviation on a product-specific basis (i.e., by control number (“CONNUM”)) using the weighted-average prices for the alleged targeted groups and the groups not alleged to have been targeted. If that volume did not exceed 33 percent of the total volume of the respondent’s sales of subject merchandise, then the Department did not conduct the second stage of the Nails test. If that volume exceeded 33 percent of the total volume of the respondent’s sale of subject merchandise, on the other hand, then we proceeded to the second stage of the Nails test.

In the second stage, the “gap test,” the Department examined all sales of identical merchandise (i.e., by CONNUM) sold to the allegedly targeted group which passed the standard deviation test. From those sales, the Department determined the total volume of sales for which the difference between the weighted-average price of sales to the alleged targeted group and the next higher weighted-average price of sales to a non-targeted group exceeds the average price gap (weighted by sales volume) for the non-targeted groups. The Department weighted each of the price gaps between the non-targeted groups by the combined sales volume associated with the pair of prices for the non-targeted groups that defined the price gap. In doing this analysis, the allegedly targeted group’s sales were not included in the non-targeted groups; the allegedly targeted group’s average price was compared only to the average prices for the non-targeted groups. If the volume of the sales that met this test exceeded five percent of the total sales volume of subject merchandise to the allegedly targeted group, then the Department determined that targeting occurred and the sales passed the Nails test.

If the Department’s two-step analysis confirmed the allegation of targeting and sufficient sales were found to have been targeted (i.e., to have passed the two-step Nails test), then the Department considered whether the average-to-average method could take into account the observed price differences. To do this, the Department evaluated the difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using the average-to-transaction method. Where there was a meaningful difference between the results of the average-to-average method and the average-to-transaction method, then the Department would find that the average-to-average method could not take into account the observed price differences, and the average-to-

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(October 18, 2011); see also Mid Continent Nail Corp. v. United States, Slip. Op. 2010-47 (CIT 2010) and Mid Continent Nail Corp. v. United States, Slip. Op. 2010-48 (CIT 2010).

<sup>86</sup> See, e.g., Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value, 75 FR 14569 (March 26, 2010); Certain Oil Country Tubular Goods from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010); and Certain Coated Paper Suitable for High- Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 59217 (September 27, 2010).

transaction method would be used to calculate the weighted-average margin of dumping for the respondent in question.

### Results of the Targeted Dumping Analysis

For the Minh Phu Group and Nha Trang Seafoods, the Department preliminarily finds that a pattern of CEP and EPs for comparable merchandise that differ significantly among the alleged targeted groups does not exist, and, therefore, the Department has not considered whether the average-to-average method can take into account the observed price differences. Specifically, the share of the Minh Phu Group and Nha Trang Seafoods alleged targeted sales do not exceeded five percent of the total sales volume of subject merchandise to the alleged targeted group, therefore the Department preliminarily determines that these sales have not been targeted.<sup>87</sup> Accordingly, the Department determines, pursuant to 19 CFR 351.414(c)(1), to calculate the weighted-average dumping margin for the Minh Phu Group and Nha Trang Seafoods using the average-to-average method for these preliminary results.<sup>88</sup>

### U.S. Price

#### *Export Price*

In accordance with section 772(a) of the Act, the Department calculated EP for sales to the United States for Nha Trang Seafoods, Quoc Viet and a portion of sales to the United States for the Minh Phu Group because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted. The Department calculated EP based on the sales price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, as appropriate, the Department deducted from the sales price certain foreign inland freight, brokerage and handling (“B&H”), and international movement costs. Because the inland freight and B&H services were either provided by a NME vendor or paid for using an NME currency, the Department based the deduction of these charges on SVs.<sup>89</sup> For international freight provided by an ME provider and paid in U.S. dollars, the Department used the actual cost per kg of the freight.

#### *Constructed Export Price*

For some of the Minh Phu Group’s sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the Vietnam-based company by a U.S. affiliate to unaffiliated purchasers in the United States. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for

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<sup>87</sup> See Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Bob Palmer, Trade Analyst, Office 9, re: “Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis for the Preliminary Results of Nha Trang Seafoods,” dated concurrently with this memorandum at 7 and Attachment 2; see also MPG Prelim Analysis Memo, at 7 and Attachment 2.

<sup>88</sup> The Department did not conduct a targeted dumping analysis for Quoc Viet because target dumping was not alleged for that company.

<sup>89</sup> See Prelim SV Memo for details regarding the SVs for movement expenses.

foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by NME service providers or paid for in an NME currency, the Department valued these services using SVs (see “Factor Valuations” section below for further discussion). For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, see the company-specific analysis memoranda, dated concurrently with these preliminary results.

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies.

#### Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by the Minh Phu Group, Nha Trang Seafoods, and Quoc Viet, the Department calculated NV based on the FOPs reported by these companies for the POR. The Department used Indonesian import data and other publicly available Indonesian sources in order to calculate SVs for the Minh Phu Group, Nha Trang Seafoods, and Quoc Viet’s FOPs. To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available SVs. The Department’s practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.<sup>90</sup>

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Indonesian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, taxes, and the Department converted all applicable FOPs to a per-kg basis.

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<sup>90</sup> See, e.g., Electrolytic Manganese Dioxide From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

Furthermore, with regard to the Indonesian import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, and South Korea may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.<sup>91</sup> Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>92</sup> Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.<sup>93</sup> Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.<sup>94</sup> Therefore, we have not used prices from these countries either in calculating the Indonesian import-based SVs or in calculating ME input values.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.<sup>95</sup> Where the Department finds ME purchases to be of significant quantities (*i.e.*, 33 percent or more), in accordance with our statement of policy as outlined in Antidumping Methodologies: Market Economy Inputs,<sup>96</sup> the Department uses the actual purchase prices to value the inputs. Information reported by the Minh Phu Group and Quoc Viet demonstrates that certain inputs were sourced from an ME country and paid for in ME currencies.<sup>97</sup> The information reported by Minh Phu Group and Quoc Viet also demonstrates that such inputs were purchased in significant quantities (*i.e.*, 33 percent or more) from ME suppliers; hence, the Department has used Minh

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<sup>91</sup> See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

<sup>92</sup> See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

<sup>93</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); see also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China, 72 FR 30758, 30763 (June 4, 2007), unchanged in Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007).

<sup>94</sup> See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China, 69 FR 75294, 75300 (December 16, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005).

<sup>95</sup> See, e.g., Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997).

<sup>96</sup> See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61717-61718 (October 19, 2006) ("Antidumping Methodologies: Market Economy Inputs").

<sup>97</sup> See Minh Phu Group's Section D Questionnaire Response, dated January 10, 2012, at 11 and Exhibit D-4; see also Quoc Viet Section D Questionnaire Response, dated January 10, 2012, at D-6 and Exhibit D-5.

Phu Group and Quoc Viet's actual ME purchase prices to value these inputs.<sup>98</sup> Where appropriate, freight expenses were added to the ME price of the input.

As explained above, Petitioner provided a shrimp SV published in AquaCulture Pacific, which although contemporaneous and publicly available, does not encompass a broad range of count sizes sold by the respondents. Conversely, the shrimp values within the NACA study, which were submitted by certain Vietnamese respondents, are compiled from actual pricing records kept by Indonesian farmers, traders, depots, agents, and processors, are count-specific, and publicly available. Therefore, to value the main input, head-on, shell-on shrimp, the Department used data contained in the NACA study.<sup>99</sup>

The Department used Indonesian Import Statistics from the Global Trade Atlas ("GTA") to value certain raw materials, certain energy inputs and packing material inputs that the Minh Phu Group, Nha Trang and Quoc Viet used to produce subject merchandise during the POR, except where listed below.

The Department valued water using publically available Indonesian data from a local public water company in Tirta Mayang Jambi City.<sup>100</sup> This source provides water rates for industrial users located in Tirta Mayang Jambi City.

We valued B&H using a price list of export procedures necessary to export a standardized cargo of goods in Indonesia. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Indonesia that is published in Doing Business 2012: Indonesia by the World Bank.<sup>101</sup>

We used Indonesian transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from Doing Business 2012: Indonesia. This World Bank report gathers information concerning the distance and cost to transport products in a 20-foot container from the largest city in Indonesia to the nearest seaport. We calculated the per-unit inland freight costs using the distance from Jakarta, to the nearest seaport. The inland freight costs in the World Bank report are for shipping a 20-foot container. We calculated a per-kg, per-kilometer surrogate inland freight rate of 0.0010 U.S. dollars per kilometer per kg based on the methodology used by the World Bank.<sup>102</sup>

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.<sup>103</sup> In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for

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<sup>98</sup> See id.

<sup>99</sup> For a detailed explanation of the Department's valuation of shrimp, see Prelim SV Memo, at 3-4.

<sup>100</sup> See Prelim SV Memo, at 5.

<sup>101</sup> See Prelim SV Memo, at 7.

<sup>102</sup> Id.

<sup>103</sup> See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies").

industry-specific labor rates is Chapter 5B: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (“Yearbook”).

However, in this case, the Department notes that Chapter 6A does not contain recent Indonesian labor data from the ILO Yearbook. Therefore, for the preliminary results, to value the respondent’s labor input, the Department relied on 2008 data reported by Indonesia to the ILO in Chapter 5B of the Yearbook.<sup>104</sup> The Department further finds the two-digit description under ISIC-Revision 3 (“15-Manufacture of Food Products and Beverages”) to be the best available information on the record because it is specific to the industry being examined, and is, therefore, derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 5B of the Yearbook, the Department calculated the labor input using total labor data reported by Indonesia to the ILO, in accordance with section 773(c)(4) of the Act.<sup>105</sup> Because these data reflect direct compensation and bonuses and none of the indirect costs reflected in Chapter 6A data, we found that the facts and information on the record do not warrant or permit an adjustment to the surrogate financial statements.<sup>106</sup> For the preliminary results, the calculated industry-specific wage rate is 4,714.59 Rupiah/hour.<sup>107</sup> A more detailed description of the wage rate calculation methodology is provided in the Prelim SV Memo.

To value factory overhead, selling, general, and administrative expenses (“SG&A”), and profit, the Department used the 2010-2011 financial statements of Gemini Seafood Limited (“Gemini”), a Bangladeshi producer of identical merchandise.<sup>108</sup> In selecting surrogate FOPs, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate ME country. It is the Department’s well established practice to rely upon the primary surrogate country for all SVs, whenever possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.<sup>109</sup> With respect to surrogate financial statements, the Department’s criteria for choosing surrogate companies are the availability of contemporaneous financial statements, comparability to the

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<sup>104</sup> See Certain Oil Country Tubular Goods From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 74644 (December 17, 2012), and accompanying Issues and Decision Memorandum at Comment 6.

<sup>105</sup> See Labor Methodologies, 76 FR at 36094, n.11; see also Small Diameter Graphite Electrodes From the People’s Republic of China: Preliminary Results and Partial Rescission of Administrative Review, 77 FR 13284, 13292-93 (March 6, 2012) (relying upon national data reported by ILO Chapter 6A in the absence of Chapter 6A industry-specific data), unchanged in Small Diameter Graphite Electrodes from the People’s Republic of China: Final Results of Administrative Review, 77 FR 40854 (July 11, 2012).

<sup>106</sup> See, e.g., Glycine From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review, 77 FR 21738, 21743 (April 11, 2012) unchanged in, Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 64100 (October 18, 2012).

<sup>107</sup> See Prelim SV Memo, at 6.

<sup>108</sup> See Prelim SV Memo, at 8.

<sup>109</sup> See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review, 77 FR 15039 (March 14, 2012), and accompanying Issues and Decision Memorandum at Comment 2A; Steel Wire Garment Hangers from the People’s Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review, 76 FR 66903, 66905 (October 28, 2011), unchanged in final Steel Wire Garment Hangers from the People’s Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review, 77 FR 12553 (March 1, 2012).

respondent's experience, and publicly available information.<sup>110</sup> Moreover, for valuing overhead, SG&A, and profit, the Department uses non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.<sup>111</sup> The courts have recognized the Department's discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.<sup>112</sup> In this instance, the Department was unable to locate any financial statements from Indonesian producers of comparable merchandise. Accordingly, the Department turned to the financial statements on the record from India and Bangladesh. Uniroyal Marine Exports, the Indian surrogate company submitted by Petitioner, shrimp accounts for 66 percent of its total production, while shrimp accounts for 100 percent of Gemini's production, the Bangladeshi surrogate company.<sup>113</sup> Thus, because Gemini's production experience is more specific to the production of shrimp, we find that Gemini's financial statements constitute the best information on the record for calculating the surrogate financial ratios in this review.

#### Currency Conversion

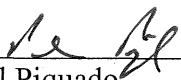
Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

#### Conclusion

We recommend applying the above methodology for these preliminary results.

✓  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

4 March 2013  
(Date)

<sup>110</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>111</sup> See 19 CFR 351.408(c)(4); see also section 773(c)(4) of the Act.

<sup>112</sup> See, e.g., FMC Cmp. v. United States, 27 CIT 240, 251 (CIT 2003); affirmed FMC Cmp. v. United States, 87 Fed. Appx. 753 (Fed. Cir. 2004) (where the CIT held that the Department can exercise discretion in choosing between reasonable alternatives); see also Crawfish Processors Alliance v. United States, 343 F. Supp.2d 1242, 1251 (CIT 2004) ("If Commerce's determination of what constitutes the best available information is reasonable, then the Court must defer to Commerce").

<sup>113</sup> See Petitioner's SV Comments, at Attachment 5. See also Respondents' SV Comments, at Exhibit SV-14.



## Appendix

1. Agrex Saigon
2. Bentre Aquaproduct Import & Export Joint Stock Company
3. Can Tho Agricultural and Animal Products Import Export Company, aka,  
Can Tho Agricultural Products, aka  
Can Tho Agricultural Products Imex Company, aka,  
CATACO
4. Can Tho Import Export Seafood Joint Stock Company, aka  
CASEAMEX
5. Cau Tre Enterprise (C.T.E.)
6. CL Fish Co., Ltd. (Cuu Long Fish Company)
7. Cautre Export Goods Processing Joint Stock Company
8. D & N Foods Processing (Danang Company Ltd.)
9. Duy Dai Corporation
10. Gn Foods
11. Hai Thanh Food Company Ltd.
12. Hai Viet Corporation ('HAVICO')
13. Hai Vuong Co., Ltd.
14. Hoang Hai Company Ltd.
15. Hua Heong Food Industries Vietnam Co. Ltd.
16. Hoa Phat Aquatic Products Processing And Trading Service Co., Ltd.
17. Interfood Shareholding Co.
18. Kien Long Seafoods Co. Ltd.
19. Luan Vo Fishery Co., Ltd.
20. Lucky Shing Co., Ltd.
21. Minh Chau Imp. Exp. Seafood Processing Co., Ltd.
22. Mp Consol Co., Ltd.
23. Ngoc Chau Co., Ltd. and/or Ngoc Chau Seafood Processing Company
24. Nhat Du Co., Ltd.
25. Quang Ninh Export Aquatic Products Factory aka  
Quang Ninh Seaproducts Factory
26. S.R.V. Freight Services Co., Ltd.
27. Sea Product
28. Sustainable Seafood
29. Tan Thanh Loi Frozen Food Co., Ltd.
30. Thanh Doan Seaproducts Import & Export Processing Joint-Stock Company  
(THADIMEXCO)
31. Thanh Hung Frozen Seafood Processing Import Export Co., Ltd.
32. Thanh Tri Seafood Processing Co. Ltd.
33. Tho Quang Seafood Processing and Export Company
34. Tien Tien Garment Joint Stock Company
35. Tithi Co., Ltd.
36. Trang Corporation
37. Vietnam Northern Viking Technologies Co., Ltd.
38. Vinatex Danang

- 39. Viet Cuong Seafood Processing Import Export Joint-Stock Company
- 40. Viet Cuong Seafood Processing Import Export
- 41. Vinh Loi Import Export Company (“Vimexco”), aka  
Vinh Loi Import Export Company (“VIMEX”), aka  
VIMEXCO aka  
VIMEX aka  
Vinh Loi Import/Export Co., aka  
Vinhloi Import Export Company aka  
Vinh Loi Import-Export Company  
Vinh Loi Import Export Company (“Vimexco”) and/or Vinh Loi Import Export  
Company (“VIMEX”)